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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,	) No. CR <u>05-813-JFW</u>
	)
13 Plaintiff,	) JOINT MOTION TO FILE MODIFIED
	) INDICTMENT WITH CHANGES TO
14 v.	) ALLEGATIONS REGARDING THRESHOLD
	) QUANTITY OF CRACK COCAINE AND
15 SANCO GRANT III,	) CORRESPONDING PENALTY
	) PROVISIONS
16 Defendant.	)
	)
17	)

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18  
19 Plaintiff United States of America, by and through its  
20 counsel of record, the United States Attorney for the Central  
21 District of California, and defendant SANCO GRANT III, both  
22 individually and by and through his counsel of record, David  
23 Dudley, Esq., hereby stipulate and jointly move the Court to find  
24 as follows:

25 1. On or about June 14, 2006, defendant pleaded guilty to  
26 counts one and two of the indictment in the above-captioned case.  
27 Count one charges defendant with violating 21 U.S.C.  
28 § 846 by conspiring to distribute at least 50 grams, namely 123.5

1 grams, of cocaine base in the form of crack cocaine ("crack  
2 cocaine"). Count two charges defendant with violating 21 U.S.C.  
3 §§ 841(a)(1), (b)(1)(B)(iii) by distributing at least 50 grams,  
4 namely 123.5 grams, of crack cocaine. These charges subject  
5 defendant to a mandatory minimum sentence of 10 years  
6 imprisonment and a statutory maximum sentence of life  
7 imprisonment. Sentencing is currently scheduled for September  
8 27, 2010.

9 2. On August 3, 2010, the President signed into law the  
10 Fair Sentencing Act of 2010 (the "Act"). The Act establishes new  
11 quantity thresholds that trigger statutory mandatory minimum  
12 sentences and increased maximum penalties for crack cocaine  
13 offenses. It is the government's position that the Act does not  
14 apply retroactively. Accordingly, absent a modification to the  
15 indictment, defendant remains subject to the penalty provisions  
16 set forth at 21 U.S.C. § 841(b)(1)(A)(iii).

17 3. The government has conducted a review of the particular  
18 individual circumstances of this case and has concluded that it  
19 is appropriate to exercise its discretion in this case to proceed  
20 on the basis of a modified indictment that subjects defendant to  
21 a mandatory minimum sentence of five years imprisonment and  
22 statutory maximum sentence of 40 years imprisonment, pursuant to  
23 21 U.S.C. § 841(b)(1)(B)(iii), rather than a mandatory minimum  
24 sentence of 10 years imprisonment and a statutory maximum  
25 sentence of life imprisonment, pursuant to 21 U.S.C.  
26 § 841(b)(1)(A)(iii). This will leave the Court with the  
27 discretion at sentencing to impose a sentence at or above this  
28

1 new mandatory minimum term of imprisonment after consideration of  
2 the sentencing factors set forth at 18 U.S.C. § 3553(a).

3 4. To this end, the parties now jointly request that the  
4 Court file the modified indictment attached as Exhibit A to this  
5 joint motion. The modified indictment replaces the allegations  
6 in the indictment regarding the threshold quantity of crack  
7 cocaine that defendant conspired to distribute and distributed  
8 and corresponding penalty provisions, which affect defendant's  
9 sentence. Specifically, the modified indictment charges  
10 defendant with trafficking in at least five grams of crack  
11 cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1),  
12 841(b)(1)(B)(iii). As such, the modified indictment now subjects  
13 defendant to a reduced mandatory minimum sentence of five years  
14 imprisonment and a reduced maximum sentence of 40 years  
15 imprisonment on each count of conviction.

16 5. The parties agree that defendant need not be newly  
17 arraigned on the modified indictment and that defendant may  
18 proceed to sentencing on the basis of the charges as set forth in  
19 the modified indictment. In addition, defendant waives any right  
20 to conduct any further proceedings in this matter pursuant to  
21 Rule 11 of the Federal Rule of Criminal Procedure, admits the  
22 allegations concerning the quantity of crack cocaine involved in  
23 defendant's offense in a manner consistent with defendant's  
24 earlier plea, and agrees that the previously filed plea agreement  
25 and defendant's prior statements at the change of plea hearing  
26 are sufficient to support a plea to the modified indictment.  
27 Defendant further agrees that defendant's guilty plea was and  
28 remains knowing and voluntary, and defendant further agrees that

1 all provisions of defendant's plea agreement, with the exception  
2 of the reference to the changed penalty provisions cited above,  
3 remain binding in this case despite the parties' consent to  
4 proceed at sentencing by means of the modified indictment.

5 6. Finally, defendant acknowledges that the modified  
6 indictment contains a change in the threshold quantity of drugs  
7 alleged by the grand jury and corresponding penalty provision.  
8 Accordingly, the modified indictment may constitute a variance  
9 from the indictment returned by the grand jury. This change,  
10 however, benefits, rather than prejudices, defendant. Indeed,  
11 the modified indictment now subjects defendant to a reduced  
12 mandatory minimum sentence and reduced maximum sentence.  
13 Accordingly, defendant waives any challenge to a variance in the  
14 indictment.

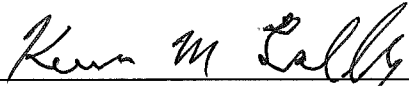
15 Dated:

Respectfully submitted,

16 ANDRÉ BIROTTE JR.  
United States Attorney

17 9/27/10

18 ROBERT E. DUGDALE  
Assistant United States Attorney  
Chief, Criminal Division

19  
20   
21 KEVIN M. LALLY  
22 Assistant United States Attorney  
Violent & Organized Crime Section

23 Dated: 9/27/10

24   
DAVID DUDLEY, ESQ.

25  
26 Dated: 9/27/10

27   
28 SANCO GRANT III

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 2004 Grand Jury

UNITED STATES OF AMERICA,	)	No. CR 05-813-JFW
	)	
Plaintiff,	)	<u>M O D I F I E D</u>
	)	<u>I N D I C T M E N T</u>
v.	)	
	)	[21 U.S.C. § 846: Conspiracy
LAMONT DINKINS, and	)	to Distribute Cocaine Base in
SANCO GRANT,	)	the Form of Crack Cocaoine;
	)	21 U.S.C. §§ 841(a)(1),
Defendants.	)	(b)(1)(B)(iii): Distribution
	)	of Cocaine Base in the Form of
	)	Crack Cocaine]
	)	

The Grand Jury charges:

COUNT ONE

[21 U.S.C. § 846]

A. OBJECT OF THE CONSPIRACY

Beginning on or about September 15, 2004, and continuing until on or about September 16, 2004, in Los Angeles County, within the Central District of California, defendants LAMONT DINKINS ("DINKINS"), SANCO GRANT III ("GRANT"), and others unknown to the Grand Jury, conspired and agreed with each other to knowingly and intentionally distribute 5 grams or more

1 of a mixture or substance containing a detectable amount of  
2 cocaine base in the form of crack cocaine ("crack cocaine"), a  
3 schedule II narcotic drug controlled substance, in violation of  
4 Title 21, United States Code, Sections 841(a)(1), (b)(1)(B)(iii).

5 B. MEANS BY WHICH THE OBJECT OF THE CONSPIRACY WAS TO BE  
6 ACCOMPLISHED

7 The object of the conspiracy was to be accomplished in  
8 substance as follows:

9 1. Defendant DINKINS would negotiate with prospective  
10 buyers regarding the quantity and price of crack cocaine that  
11 would be sold as well as the location where the sale would take  
12 place.

13 2. Defendant GRANT would supply defendant DINKINS with the  
14 crack cocaine to be sold to the prospective buyer.

15 3. Defendant DINKINS would meet with the prospective buyer  
16 and provide the prospective buyer with crack cocaine.

17 4. Defendant DINKINS would collect payment for the crack  
18 cocaine from the buyer.

19 C. OVERT ACTS

20 In furtherance of the conspiracy and to accomplish the  
21 object of the conspiracy, defendants DINKINS, GRANT, and others  
22 unknown to the Grand Jury, committed various overt acts on or  
23 about the following dates within the Central District of  
24 California, including, but not limited to, the following:

25 1. On September 15, 2004, defendant DINKINS agreed to sell  
26 approximately four and one-half ounces of crack cocaine to a  
27 Federal Bureau of Investigation confidential informant ("CI") for  
28 \$2,000.

1           2.    On September 15, 2004, defendant DINKINS informed the  
2 CI of the location where the sale would be conducted.

3           3.    On September 16, 2004, defendant DINKINS accepted  
4 \$2,000 from the CI as payment for the crack cocaine.

5           4.    On September 16, 2004, defendant DINKINS obtained  
6 approximately 123.5 grams of a mixture or substance containing  
7 crack cocaine from defendant GRANT.

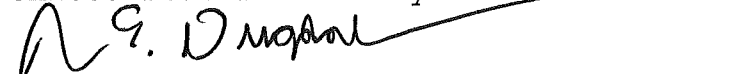
8           5.    On September 16, 2004, defendant DINKINS provided the  
9 CI with approximately 123.5 grams of a mixture or substance  
10 containing crack cocaine.

COUNT TWO

[21 U.S.C. §§ 841(a)(1), (b)(1)(B)(iii)]

On or about September 16, 2004, in Los Angeles County, within the Central District of California, defendants LAMONT DINKINS and SANCO GRANT III knowingly and intentionally distributed 5 grams or more, namely, approximately 123.5 grams, of a mixture or substance containing a detectable amount of cocaine base in the form of crack cocaine, a schedule II narcotic drug controlled substance.

ANDRÉ BIROTTE JR.  
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